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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE, Plaintiff and Respondent, v. TYMIR IBN ABDULLAH, Defendant and Appellant.	E055216 (Super.Ct.No. FWV1102893) OPINION

APPEAL from the Superior Court of San Bernardino County. Sharon Mettler, Judge. (Retired judge of the Kern Super. Ct. assigned by the chief Justice pursuant to art. VI, § 6 of the Cal. Const.) Affirmed with directions.

James M. Crawford, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Defendant and appellant Tymir Ibn Abdullah was charged by felony complaint with four counts of second degree commercial burglary. (Pen. Code, § 459, counts 1-4.)[1] The complaint also alleged that he had one prior strike conviction (§§ 1170.12, subds. (a)-(d), 667, subds. (b)-(i)), and had served five prior prison terms, within the meaning of section 667.5, subdivision (b). Pursuant to a plea agreement, defendant pled guilty to count 1 and admitted the prior strike conviction, in exchange for a four-year state prison term and the dismissal of the remaining counts and allegations. The court sentenced him to four years in prison and awarded a total of 19 days of presentence custody credits.

Defendant filed a timely notice of appeal, based on the sentence or other matters occurring after the plea. He also challenged the validity of his plea and requested a certificate of probable cause, which the trial court denied. Defendant subsequently requested the court to appoint a new attorney to prepare a motion to withdraw his guilty plea. The court informed defendant that it was without jurisdiction to appoint new counsel since he had already been sentenced to state prison. We affirm.

FACTUAL BACKGROUND

Defendant was charged with, and pled guilty to, second degree commercial burglary (§ 459), after he entered a Sephora store with the intent to commit larceny.

[1] All further statutory references will be to the Penal Code, unless otherwise noted.

ANALYSIS

Defendant appealed, and upon his request this court appointed counsel to represent him. Counsel has filed a brief under the authority of *People v. Wende* (1979) 25 Cal.3d 436 and *Anders v. California* (1967) 386 U.S. 738 [87 S.Ct. 1396, 18 L.Ed.2d 493] setting forth a statement of the case and two potential arguable issues: (1) whether defendant's waiver of his constitutional rights to a jury trial was a product of undue coercion, since he felt rushed into pleading guilty; and (2) whether the court abused its discretion in refusing to issue a certificate of probable cause. Counsel has also requested this court to undertake a review of the entire record.

We offered defendant an opportunity to file a personal supplemental brief, which he has done. In his one-page supplemental brief, defendant contends that he was rushed by his trial counsel to withdraw his not guilty plea, and he was misinformed concerning his sentencing date. We observe that similar arguments were made by defendant in his request for certificate of probable cause, which was denied. Defendant also asserts that he was told on December 5, 2011, (subsequent to being sentenced) that he would be able to have a hearing in which a conflict panel would decide if he could withdraw his guilty plea. The court appointed him counsel that day and set a hearing for December 19, 2011. On December 19, 2011, a different court dismissed his counsel and told him he could not withdraw his plea because he had already been sentenced.[2] Defendant additionally

[2] Defendant makes no argument, but simply raises the issue.

requests this court to refer to the clerk's transcript and the plea agreement, which "will show that [he] never waived [his] right to delay of pronouncement of judgement [*sic*]."

Section 1018 authorizes a court to allow a defendant to withdraw his plea, only if the motion to do so is made before judgment, and only upon a showing of good cause. (§ 1018; see also *People v. Gari* (2011) 199 Cal.App.4th 510, 521.) "The writ of error *coram nobis* is an appropriate procedure for a postjudgment challenge to a guilty plea allegedly induced by mistake, fraud, or coercion. [Citations.]" (*People v. Chaklader* (1994) 24 Cal.App.4th 407, 409.) Here, defendant attempted to withdraw his plea after judgment. However, as the court explained at the December 19, 2011 hearing, the previous court (at the December 5, 2011 hearing) had no jurisdiction to appoint counsel for a motion to withdraw the plea, since defendant had already been sentenced and his request to withdraw was postjudgment. We note that defendant has apparently not filed a writ of error *coram nobis*.

Regarding defendant's assertion that he did not "waive his right to delay" pronouncement of judgment, the record shows otherwise. Defendant waived his right to have the matter referred to probation for an investigation and hearing, and he requested the court to sentence him "without any further delay of hearing," immediately after he pled guilty.

Pursuant to the mandate of *People v. Kelly* (2006) 40 Cal.4th 106, we have independently reviewed the record for potential error and note that the sentencing minute order and abstract of judgment require correction. They both state that the presentence custody credits were awarded under section 2933.1. However, "'[s]ection 2933.1 applies

only where the defendant's current conviction is a *violent* felony listed in section 667.5. [Citation.]" (*In re Mitchell* (2000) 81 Cal.App.4th 653, 656.) Defendant's current conviction is for second degree burglary, which is not one of the offenses listed in section 667.5. We will therefore order the November 16, 2011 sentencing minute order and the abstract of judgment to be corrected to show that defendant's custody credits were awarded under section 4019.

DISPOSITION

The trial court is directed to amend the sentencing minute order and abstract of judgment to reflect that defendant's presentence custody credits were awarded under section 4019, and to forward copies of the amended minute order and abstract of judgment to the Department of Corrections and Rehabilitation. In all other respects, the judgment is affirmed.

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HOLLENHORST
Acting P. J.

We concur:

McKINSTER
J.

KING
J.